

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X, Ms Y and their daughter who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X (and family)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1984

### Family details

<b>Family members</b>	Ms Y (wife)	Miss Z (daughter)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1984	2008

<b>Ombudsman ID</b>	1002509-O
<b>Date of DIBP's reviews</b>	24 September 2016 and 29 March 2017
<b>Total days in detention</b>	916 (at date of DIBP's latest review)

### Detention history

14 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
13 February 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
27 March 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Facility B.
2 March 2016	Transferred to community detention.

### Visa applications/case progression

Mr X and his family arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that the family is barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.

The family was returned to Australia for medical treatment on 13 February 2014.

The department has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and they remain liable for transfer back to an RPC on completion of their treatment.

23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
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<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

## Health and welfare

### Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X and his family received extensive emotional support and attended regular psychological sessions to discuss parenting techniques and management of stress. Mr X attended counselling and was monitored through Supportive Monitoring and Engagement (SME) observations for the management of situational stress and self-harm ideation. Following the family's transfer to community detention, no further concerns were reported.</p> <p>IHMS further advised that Mr X received treatment for a lacerated hand following an incident of self-harm.</p>	
12 July 2015	An Incident Report recorded that Mr X self-harmed.

### Ms Y

<p>IHMS advised that Ms Y engaged with the mental health team for support regarding a history of post-natal depression, instances of threatened self-harm and Miss Z's behavioural concerns. Following the family's transfer to community detention, no further mental health concerns were reported.</p> <p>IHMS further advised that Ms Y was referred for physiotherapy for ongoing back pain and urinary concerns. After reporting no improvement regarding the urinary concerns she was referred for gynaecological review and continued to await an appointment at the time of the department's latest review.</p>	
17 April 2015 – 15 October 2015	Incident Reports recorded that Ms Y threatened self-harm on three occasions and attempted self-harm on a fourth occasion.
June 2015	Gave birth to her son <sup>2</sup> without complication.

### Miss Z

<p>IHMS advised that Miss Z frequently engaged with a psychologist, specialist counselling and the mental health team after Mr X and Ms Y expressed concerns regarding defiant behaviour, bedwetting, eating habits, nightmares, being bullied at school and frequent scratching. Mr X and Ms Y were provided with advice for management of Miss Z's behavioural concerns and in December 2015 a psychiatrist prescribed Miss Z with antidepressant medication to assist with her sleeping patterns. Upon improvement in her condition following the family's transfer to community detention her medication was ceased. At the time of the department's latest review Miss Z continued to attend regular counselling for management of psychological distress.</p> <p>IHMS further advised that Mr X and Ms Y stated that Miss Z had reported multiple instances of abdominal pain, vomiting and headaches. These symptoms were investigated and it was advised that her symptoms were likely to be related to emotional distress.</p>	
2 July 2015	An Incident Report recorded that Ms Y alleged that Miss Z had been sexually assaulted. The matter was referred to police with no further investigation and Miss Z was referred for counselling.
26 August 2015	An Incident Report recorded that Miss Z's parents stated that she had threatened self-harm.
16 February 2016	An Incident Report recorded that Miss Z threatened self-harm and was placed on SME observations.

<sup>2</sup> Master P was born in Australia in June 2015 and detained on 14 July 2015. He has been in detention for less than two years and is not subject to review under s 486N.

26 February 2016	An Incident Report recorded that Miss Z had allegedly been the victim of sexual assault. The matter was referred to police and upon further information it was determined that the incident referred to was the incident that had previously been reported in July 2015.
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**Detention incidents**

16 April 2015	An Incident Report recorded that Mr X allegedly assaulted a detention centre staff member.
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**Ombudsman assessment/recommendation**

Mr X and his family were detained on 14 August 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes with concern the government’s duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose. The Ombudsman notes with serious concern that Miss Z continues to require support for ongoing psychological distress.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely that they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving the family’s immigration status.